

(PRE-FILED)

By: **Delegate D. Davis**

Requested: October 6, 2000

Introduced and read first time: January 10, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol-Related Driving Offenses - Blood Alcohol Concentration Levels**

3 FOR the purpose of reducing the level of alcohol concentration required for a
4 determination of driving while intoxicated per se; reducing the level of alcohol
5 concentration that will result in the suspension of a driver's license; reducing
6 the level of alcohol concentration that constitutes prima facie evidence of driving
7 while under the influence of alcohol; reducing the level of alcohol concentration
8 that will result in the crime of homicide by motor vehicle or vessel while
9 intoxicated per se and the crime of life threatening injury by motor vehicle or
10 vessel while intoxicated per se; and generally relating to offenses involving
11 driving while intoxicated per se or driving while under the influence.

12 BY repealing and reenacting, with amendments,
13 Article 27 - Crimes and Punishments
14 Section 388A(a)(2) and 388B(a)(2)
15 Annotated Code of Maryland
16 (1996 Replacement Volume and 2000 Supplement)

17 BY repealing and reenacting, without amendments,
18 Article 27 - Crimes and Punishments
19 Section 388A(a)(1) and 388B(a)(1)
20 Annotated Code of Maryland
21 (1996 Replacement Volume and 2000 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Courts and Judicial Proceedings
24 Section 10-307
25 Annotated Code of Maryland
26 (1998 Replacement Volume and 2000 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article - Transportation

1 Section 11-127.1 and 16-205.1(b), (f)(1), (4)(i), (7), and (8)(i) and (v), and (h)
2 Annotated Code of Maryland
3 (1999 Replacement Volume and 2000 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article 27 - Crimes and Punishments**

7 388A.

8 (a) (1) In this section the following words have the meanings indicated.

9 (2) (i) "Intoxicated per se" means an alcohol concentration at the time
10 of testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of
11 blood or grams of alcohol per 210 liters of breath.

12 (ii) If the alcohol concentration is measured by milligrams of
13 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
14 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
15 by dividing the measurement by 1000.

16 388B.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) (i) "Intoxicated per se" means an alcohol concentration at the time
19 of testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of
20 blood or grams of alcohol per 210 liters of breath.

21 (ii) If the alcohol concentration is measured by milligrams of
22 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
23 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
24 by dividing the measurement by 1000.

25 **Article - Courts and Judicial Proceedings**

26 10-307.

27 (a) (1) In a proceeding in which a person is charged with a violation of
28 Article 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive
29 a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the Transportation Article,
30 the amount of alcohol in the person's breath or blood shown by analysis as provided in
31 this subtitle is admissible in evidence and has the effect set forth in subsections (b)
32 through (e) of this section.

33 (2) Alcohol concentration as used in this section shall be measured by:

34 (i) Grams of alcohol per 100 milliliters of blood; or

1 (ii) Grams of alcohol per 210 liters of breath.

2 (3) If the amount of alcohol in the person's blood shown by analysis as
3 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or
4 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law
5 judge, as the case may be, shall convert the measurement into grams of alcohol per
6 100 milliliters of blood by dividing the measurement by 1000.

7 (b) If at the time of testing a person has an alcohol concentration of 0.05 or
8 less, as determined by an analysis of the person's blood or breath, it shall be presumed
9 that the defendant was not intoxicated and that the defendant was not driving while
10 under the influence of alcohol.

11 (c) If at the time of testing a person has an alcohol concentration of more than
12 0.05 but less than [0.07] 0.06, as determined by an analysis of the person's blood or
13 breath, this fact may not give rise to any presumption that the defendant was or was
14 not intoxicated or that the defendant was or was not driving while under the
15 influence of alcohol, but this fact may be considered with other competent evidence in
16 determining the guilt or innocence of the defendant.

17 (d) If at the time of testing a person has an alcohol concentration of at least
18 [0.07] 0.06 but less than [0.10] 0.08, as determined by an analysis of the person's
19 blood or breath, it shall be prima facie evidence that the defendant was driving while
20 under the influence of alcohol.

21 (e) If at the time of testing a person has an alcohol concentration of 0.02 or
22 more, as determined by an analysis of the person's blood or breath, it shall be prima
23 facie evidence that the defendant was driving with alcohol in the defendant's blood.

24 (f) If at the time of testing a person has an alcohol concentration of 0.02 or
25 more, as determined by an analysis of the person's blood or breath, it shall be prima
26 facie evidence that a defendant was driving in violation of an alcohol restriction under
27 § 16-113 of the Transportation Article.

28 **Article - Transportation**

29 11-127.1.

30 (a) "Intoxicated per se" means having an alcohol concentration at the time of
31 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of
32 blood or grams of alcohol per 210 liters of breath.

33 (b) If the alcohol concentration is measured by milligrams of alcohol per
34 deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a court or an
35 administrative law judge, as the case may be, shall convert the measurement into
36 grams of alcohol per 100 milliliters of blood by dividing the measurement by 1000.

1 16-205.1.

2 (b) (1) Except as provided in subsection (c) of this section, a person may not
3 be compelled to take a test. However, the detaining officer shall advise the person
4 that, on receipt of a sworn statement from the officer that the person was so charged
5 and refused to take a test, or was tested and the result indicated an alcohol
6 concentration of [0.10] 0.08 or more, the Administration shall:

7 (i) In the case of a person licensed under this title:

8 1. For a test result indicating an alcohol concentration of
9 [0.10] 0.08 or more at the time of testing:

10 A. For a first offense, suspend the driver's license for 45 days;
11 or

12 B. For a second or subsequent offense, suspend the driver's
13 license for 90 days; or

14 2. For a test refusal:

15 A. For a first offense, suspend the driver's license for 120
16 days; or

17 B. For a second or subsequent offense, suspend the driver's
18 license for 1 year;

19 (ii) In the case of a nonresident or unlicensed person:

20 1. For a test result indicating an alcohol concentration of
21 [0.10] 0.08 or more at the time of testing:

22 A. For a first offense, suspend the person's driving privilege
23 for 45 days; or

24 B. For a second or subsequent offense, suspend the person's
25 driving privilege for 90 days; or

26 2. For a test refusal:

27 A. For a first offense, suspend the person's driving privilege
28 for 120 days; or

29 B. For a second or subsequent offense, suspend the person's
30 driving privilege for 1 year; and

31 (iii) In addition to any applicable driver's license suspensions
32 authorized under this section, in the case of a person operating a commercial motor
33 vehicle who refuses to take a test:

1 1. Disqualify the person's commercial driver's license for a
2 period of 1 year for a first offense, 3 years for a first offense which occurs while
3 transporting hazardous materials required to be placarded, and disqualify for life for
4 a second or subsequent offense which occurs while operating any commercial motor
5 vehicle; or

6 2. If the person is licensed as a commercial driver by another
7 state, disqualify the person's privilege to operate a commercial motor vehicle and
8 report the refusal and disqualification to the person's resident state which may result
9 in further penalties imposed by the person's resident state.

10 (2) Except as provided in subsection (c) of this section, if a police officer
11 stops or detains any person who the police officer has reasonable grounds to believe is
12 or has been driving or attempting to drive a motor vehicle while intoxicated, while
13 under the influence of alcohol, while so far under the influence of any drug, any
14 combination of drugs, or a combination of one or more drugs and alcohol that the
15 person could not drive a vehicle safely, while under the influence of a controlled
16 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
17 of this title, and who is not unconscious or otherwise incapable of refusing to take a
18 test, the police officer shall:

19 (i) Detain the person;

20 (ii) Request that the person permit a test to be taken; and

21 (iii) Advise the person of the administrative sanctions that shall be
22 imposed for refusal to take the test, including ineligibility for modification of a
23 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
24 section, and for test results indicating an alcohol concentration of [0.10] 0.08 or more
25 at the time of testing.

26 (3) If the person refuses to take the test or takes a test which results in
27 an alcohol concentration of [0.10] 0.08 or more at the time of testing, the police officer
28 shall:

29 (i) Confiscate the person's driver's license issued by this State;

30 (ii) Acting on behalf of the Administration, personally serve an
31 order of suspension on the person;

32 (iii) Issue a temporary license to drive;

33 (iv) Inform the person that the temporary license allows the person
34 to continue driving for 45 days if the person is licensed under this title;

35 (v) Inform the person that:

36 1. The person has a right to request, at that time or within
37 10 days, a hearing to show cause why the driver's license should not be suspended
38 concerning the refusal to take the test or for test results indicating an alcohol

1 (ii) The sworn statement of the police officer and of the test
2 technician or analyst shall be prima facie evidence of a test refusal or a test resulting
3 in an alcohol concentration of [0.10] 0.08 or more at the time of testing.

4 (8) (i) After a hearing, the Administration shall suspend the driver's
5 license or privilege to drive of the person charged under subsection (b) or (c) of this
6 section if:

7 1. The police officer who stopped or detained the person had
8 reasonable grounds to believe the person was driving or attempting to drive while
9 intoxicated, while under the influence of alcohol, while so far under the influence of
10 any drug, any combination of drugs, or a combination of one or more drugs and
11 alcohol that the person could not drive a vehicle safely, while under the influence of a
12 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
13 § 16-813 of this title;

14 2. There was evidence of the use by the person of alcohol, any
15 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a
16 controlled dangerous substance;

17 3. The police officer requested a test after the person was
18 fully advised of the administrative sanctions that shall be imposed, including the fact
19 that a person who refuses to take the test is ineligible for modification of a suspension
20 or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and

21 4. A. The person refused to take the test; or

22 B. A test to determine alcohol concentration was taken and
23 the test result indicated an alcohol concentration of [0.10] 0.08 or more at the time of
24 testing.

25 (v) The suspension imposed shall be:

26 1. For a test result indicating an alcohol concentration of
27 [0.10] 0.08 or more at the time of testing:

28 A. For a first offense, a suspension for 45 days; or

29 B. For a second or subsequent offense, a suspension for 90
30 days; or

31 2. For a test refusal:

32 A. For a first offense, a suspension for 120 days; or

33 B. For a second or subsequent offense, a suspension for 1
34 year.

35 (h) Notwithstanding any other provision of this section, if a driver's license is
36 suspended based on multiple administrative offenses of refusal to take a test, or a test

1 to determine alcohol concentration taken that indicated an alcohol concentration of
2 [0.10] 0.08 or more at the time of testing, or any combination of these administrative
3 offenses committed at the same time, or arising out of circumstances simultaneous in
4 time and place, or arising out of the same incident, the Administration:

5 (1) Shall suspend the driver's license for the administrative offense that
6 results in the lengthiest period of suspension; and

7 (2) May not impose any additional periods of suspension for the
8 remainder of the administrative offenses.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2001.